

Essay

Teaching Law: Advice for the New Professor

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Fresh from practice, clerking, or sometimes even law school itself, the newly-appointed law professor is injected into the classroom with the incredible assumption that he or she will know what to do in front of a class and, therefore, needs no guidance in the art of teaching. The neophyte survives this grueling experience, if at all, by aping his or her favorite professors in law school and by garnering whatever points can be gleaned from wiser, more experienced heads on the faculty, who share their knowledge with varying degrees of enthusiasm. To some extent this lack of training in educational skills is due to the belief that no one can show someone else how to teach law—that styles and methods of doing so are too divergent to crystallize into an explainable method—and that, even if more could be done, the law school has neither the time nor the expertise to attempt the task of turning lawyers into classroom wizards.

The current “sink or swim” method of introduction to law teaching works well enough, I suppose, in that most new professors do survive the process and reach a state of confidence about their classroom competence, but I think this system is unduly hard on both the new teacher and his or her long-suffering students. Much agony over the process can be avoided by a few words on the basic rules and some hints as to possible shortcuts through the educational bramble bush. My qualifications for this task are that I am, and have been for over a decade, a popular teacher, winning in that period five teaching awards from three law schools. As a consequence, I have frequently been sought out by new teachers and asked to observe their classes and give advice. Through the years I have found myself saying the same things so often that I decided to write them down—hence this Article. I have no pretense either to superior knowledge of educational theory (indeed, like most law professors, I lack any formal educational training) or to comprehensive coverage of the topic. Nor do I plan to address questions of classroom style or methods, which do and should vary with the wonderful complexities of human individuality. My only task is to set down some of the basic guidelines that make life a bit easier for new teachers, guidelines I myself was taught by others¹ in my earliest classroom years or that I discovered, painfully, on my

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1. If you have never done so, read Prosser's wonderful description of a typical legal teaching career, *Lighthouse No Good*, 1 J. LEGAL EDUC. 257 (1948).

own. The rest of this Article will be addressed, in the second person, to the new law professor.

I. GETTING READY FOR THE FIRST CLASS

A. *Choosing Your Courses*

Typically the negotiations that lead to employment include a clear understanding of which courses the new professor will be assigned. Try, if you have the bargaining power, to get a light load—preferably only one course for your first session—and to put together a teaching package of related subjects. It is a much easier professional life to maintain competence in one field (*e.g.*, commercial law) and teach its component courses (contracts, U.C.C. subjects, consumer law, and creditors' rights, all of which feed upon each other very nicely) than to have to keep up with the changes in three or four disparate areas (*e.g.*, evidence, legislation, and sex-based discrimination, to take a real life example from the subjects taught by one of my colleagues). If you are already trapped and have agreed to teach a number of unrelated subjects, don't worry. Just decide—the end of the first year is a good time for this decision—which of the subject areas is right for you based on your interests and chances for professional advancement. Then let the dean know that you want to branch out in whatever is the appropriate direction and that you would like to drop the unrelated courses in coming years. Law schools have little difficulty adapting to these requests if given enough warning. Get in line for the courses you want to teach, keep reminding everyone having an interest in the matter of your curricular preferences, and, as the school years zip by, you will find yourself teaching a compatible package of subjects. You will find that the unrelated subjects you taught were helpful in your development as a teacher and that the knowledge gained while teaching them comes serendipitously to your aid in a number of unexpected situations.

B. *Scheduling*

In agreeing to a time schedule for your first semester, balance three factors. The first is class preparation time. It is comforting to have at least two uninterrupted hours (not including lunch hour) before class in which to get ready. The second factor is student attitude: teach too early and they are not awake, teach too late in the day and you will face a class of intellectual zombies. The final consideration is administrative convenience. If you have ever attempted to prepare a law school class schedule—juggling curricular needs, classroom sizes, professorial whims—you will know how hard a task is involved. If you bother the person in charge of the schedule too much, he or she might unleash the powers of the scheduler upon you. Next year you may find yourself teaching "Legal Spelling" on Saturday mornings at 8:00 a.m.

C. Setting a Goal

Once you've selected your course, you need to set a goal. Why are you teaching this subject to these people? What are they going to do with the knowledge? What do you hope to accomplish? Getting your goal set clearly in your mind aids in deciding a number of other issues, so it is an important preliminary step, too often overlooked.

For many new teachers, I'm afraid, the goal is simply "to get through the semester without too many student complaints," a shortsighted approach. In an unbelievably short period of time, you will sit in cap and gown and watch your students graduate, and it will occur to you that virtually all they know about your subjects is what you taught them. The impact of your teaching will be felt as they practice law, become legislators, and even are appointed to the bench. Structure your course in terms of what knowledge and attitudes you think it appropriate they carry with them into the societal mainstream.

In part, your decision on this matter turns on the nature of your students. If you are teaching at one of the nation's premier law schools, a goodly percentage of your students will use their legal education for tasks other than daily law practice. Many may be headed for law teaching, others for the worlds of business or government, and, of course, many *will* practice law, though typically in the finest of settings. At such institutions it would be a mistake to concentrate primarily on the practical issues that challenge the practitioner. Such students will want and need a more balanced and in-depth look into the underpinnings of your course—requiring that you highlight not only what the law is, but such issues as where and why it is wrong, its philosophical force, and the changes needed. At such schools, scope of coverage may have little importance compared with depth of coverage.

On the other hand, at most law schools the overwhelming majority of students will need your knowledge for the daily practice of law. If you teach the subject in such depth that you get around to covering only half of the material in the book, your former students will remember you with hatred as they encounter the major unexplored areas in their practice (or as they pay their insurance premiums for malpractice coverage, or worse, file a claim). As a law student, I once took a course in trust law. The casebook contained well over 800 pages, but the professor only made it to page 130 by semester's end. I remember thumbing through the 700 or so virgin pages with a great sense of unease, and I've never known what to reply when asked, "Did you study trusts?"

You need to plan your scope of coverage carefully, trying to guess ahead of time how much of each semester should be devoted to which topic. Invariably you will guess wrong or unwisely, but this experience points up the adjustments to be made the next time you teach the course. And, obviously, it is better to have some idea where you are going than none at all.

Scope of coverage also varies with the nature of the subject matter. Some subjects introduce their basic ideas early and the rest of the semester is involved in fleshing out details (contract law comes to mind). In such courses scope of coverage can yield to depth of coverage because the practitioner with a good grounding in the basic ideas can research the details on his or her own. On the other hand, some courses address topics that are a seamless web (for example, commercial paper), and here leaving out half the course (forgery law) means the students didn't learn anything of much value and are only half-armed for doing legal battle in these arenas.

Once you've set your goal, remember it after you've read the final exams and ask yourself how close you came to reaching it. Reviews of this issue will lead to significant yearly changes in your classroom style.

D. Learning Your Subject

It is an awesome undertaking to master an area of law to the point where you "profess" to teach it to others. In the beginning this usually involves something of a sham, but don't pretend to too much and you will find the task manageable.

I suggest you start by reading cover-to-cover the leading treatise in your field, assuming it is not of overwhelming size. Concentrate on history. Knowing how and why the law of your subject reached its present state is the beginning of true knowledge and leads to the kind of personal outrage that in turn leads to good law review articles as well as to informed teaching.

Divide your topic into its various divisions and make sure you have a grasp on the basic principles of each division, studying also how the parts interrelate and complement each other. For the questions that will arise as you dig, nothing (with the possible exception of a first-rate research assistant) helps as much as a mentor. Find someone who knows the field—preferably someone who has taught it—and lay your inquiries humbly at his or her feet. You will be surprised by how often the mentor has no solution (and, indeed, may never have thought of the problem), but it is comforting to know that this matter does not bother the experts and may not, therefore, be worth your valuable preparation time, at least at this juncture of your professional career. Shelved issues of this stripe have a way of representing themselves and being solved in the course of things.

As you prepare for each individual class, try to find time to read at least one good law review article on the topic of the day. If you repeat this practice each time you teach the course, you will acquire an impressive body of knowledge very quickly, soon knowing much more than you need to teach the subject. Switch casebooks after you have taught the course twice, and you will see the course from a different perspective, growing from the experience.

Once you have taught the course, teach it again as soon as you can, using the same casebook (unless its initial selection proved a definite mistake). The second time through a course is a different experience from the first. Stripped

of daily panic and fear of the unknown, the second outing permits you to explore the course's pedagogical possibilities with a surer sense of control. The things you tried the first time that *didn't* work—those awful moments when you stand in front of a class and watch helplessly as your “best” ideas spin, crash, and burn—can be forgotten next time round or reworked and launched in a new, improved form. The parts of the casebook that caused unneeded trouble should be marked with the marginal comment “CAN OF WORMS” and avoided like the plague on second teaching.

E. *Selecting a Casebook*

Write all of the publishers, tell them your subject, and ask for complimentary copies of their books on point. No matter what your instincts tell you or what others advise (excepting, of course, this advice), for your first outing adopt the *most popular* casebook published on your subject. It is popular for a reason: teachability; on your first try at a course, you do not need major trouble with the casebook. Bitter experience has taught me—and others confirm this—that until one actually teaches from a book, it is impossible to predict how good a teaching tool it is, so be wary of adopting as your first book the newest, experimental publication on the market. Again, asking around amongst those who have taught the subject for years should produce something of a consensus as to the “best book,” or, if your field is blessed with many happy choices, “best books.” If you do not have a mentor at your school, pick up the phone and call strangers at other law schools who teach this area. Most law professors are gentle souls who remember their first year all too well and will willingly help smooth its travails.

Once you have selected a book, write the publisher immediately and ask to have a loose-leaf edition of the book prepared for you. All the major law publishing companies are glad to do this; they are enormously grateful for each adoption they can get. The looseleaf edition comes with extra blank pages on which helpful class notes can be written and interleaved with the text.

F. *Daily Preparation*

For the very first class prepare a schedule of your introductory remarks. Be sure to tell the students your name and how to pronounce it. Students are grateful for all the advance warning they receive on course format, so take the time to clear up which texts are required, your attitudes on preparation, participation, and the proposed nature of the final exam. An overview of the subject is in order, as are guidance on the importance of the course (your “goal”) and a list of useful library references, which you are well advised to have placed on reserve. If you wish to cover a segment of the book in the first class, post an assignment on the designated bulletin board well in advance of class. If it is your plan to call on students by name, the registrar's

office can supply you with a class roster. You may wish to pass around a seating chart, in which case most schools have blank ones already prepared.

As far as getting ready for each class, remember this truism: the success of a class is *directly proportional* to the amount of time spent in preparation for it. In the beginning you will doubtless overprepare, but that won't hurt you a bit since little of this knowledge is wasted. After a while you will begin to develop a sense of the time necessary for adequate preparation, and you should fall into a professional rhythm that serves you nicely. Don't worry if you walk into class feeling sure that there are gaps in your knowledge. There are certain to be such gaps, and you have set an impossible standard if you try to eliminate all of them on your first try at teaching. With time the gaps will close, and your experiences in the classroom will make it all too clear which ones need to be filled immediately and which can wait.

Believe it or not, after a few times through the course there comes a happy day when you walk into class secure in your knowledge of material and totally unafraid of the forest of student hands waiving in the air signalling the curiosity of fine minds. Once you reach this nirvana, you can still be surprised by student questions that raise issues to which you have no answers. But once you understand your subject, these questions on "new" matters tend to fall into two categories: (1) "Isn't that an interesting question; why don't you (the student) go research it?"—used as a response to very minor points raised—and (2) "Isn't that an interesting question; I certainly should know the answer to that; let me (the teacher) look it up and report back"—used when the student has uncovered something that you *should* know but which has mysteriously escaped your attention up to this minute. Somehow no matter how long you are in this business, these things keep cropping up, and students will find them semester after semester, like bird dogs pointing.

Once you have achieved competence, set up a plan for professional maintenance. Our law is changing faster each day, and it is all too easy to find yourself in the classroom lecturing on law overturned last month. The library will circulate to you the latest reports from the research works on your subjects if you tell the librarians which ones to earmark for your attention. If your subject deals with federal agencies, get on their mailing lists. To keep up on law review articles, have the library route to you the weekly law review list published by the University of Washington.² Above all, make a yearly review (write a reminder on your calendar) of the legislation coming out of both Congress and your state legislature; if not watched carefully these august bodies will repeal your education behind your back with no warning.

2. *Current Index to Legal Periodicals*, by the University of Washington Law Library and the Washington Law Review, Condon Hall, Seattle, Washington 98105 (published weekly).

II. IN THE CLASSROOM

A. *Teaching as an "Ego Trip"*

No doubt about it, standing up before a large group of eager, intelligent people, advising them about the great issues of our time, and having them write down every word you say is enormously pleasurable for most people. If you do well in the classroom, you will, like it or not, develop a following among students (and, eventually, alumni), and this too can lead to a sense of self-importance. This may be false pride, or your reputation may be deserved—you *are* that good. In either case, the ego satisfaction that can come from teaching can overwhelm a teacher; left unchecked it seriously interferes with the job at hand. You awake one day and realize that at some point you quit teaching and began performing. You may also notice that since that transformation, your classes have not been going as well either. This is because you have forgotten your *goal*. Surely your goal was not to entertain the students, to dazzle them with your talents and abilities, or even to display for them your awesome intellect and knowledge. The goal is *to teach the students law*. If it shifts to ego satisfaction, take yourself firmly in hand and concentrate in the classroom on the process of communicating ideas.

The opposite of the above is the teacher for whom things are not going well. When you enter the class, do they frown? When you say something, do they yawn, or, worse, mutter? Are there fewer of them in attendance each day? Then the temptation is to focus on yourself: What am I doing wrong? What am I saying? How do I look? How much have I studied? But this inner attention has the same devastating effect as self-admiration: classroom performance declines because the teacher has quit thinking about teaching and has begun concentrating on the teacher.

When you are in the classroom, do not focus on what *you* are doing, however fascinating or revolting. Keep your thoughts on what is going on in the brains of your students. You are a mere employee. You are there to teach them law. Are they learning? Will they be good lawyers, law makers, judges? When the client presents them with the issue you are now exploring, will they fumble it, adding to the quantum of legal malpractice? Enormous societal forces are at stake in your classroom. If you forget that and become top-heavy by concentrating on yourself and not your students, things will go badly for you. For them, too.

The best advice I have for you—advice I warrant sound—is this: *Forget yourself; think of them*. Do this at all moments in the classroom and you will be amazed how well your classes go.

B. *Being Yourself*

If you concentrate on the students when teaching, your own personality has a chance to come through. Let it. The students are fascinated by each

faculty member, and they will catalog your virtues and your faults, and bruit stories about you through the halls. If you disguise your personality, the students will find you out and think less of you as a phony.

I advise truth in the classroom. I tell my students my goal for the course, and I ask them to consider the task at hand in light of what it can and should mean in their own lives. I do not hold back appropriate humor, digressions or even anger, but neither do I force these things. When I make mistakes or do not know the answer, I try (not always successfully) to confess error and own up to ignorance.

On the days when it goes well, you will feel like the conductor of a fine symphony orchestra—particularly when leading classroom discussions—picking and choosing ideas and students, guiding the group to the goal with harmony and excitement. When it goes badly—and it will on some black days—then you will feel like standing at the classroom exit and shaking each student's hand while apologizing and refunding his or her money.

My point is that you must expect both the good and bad days and not be thrown by either. Come weal or woe, your task stays the same, and tomorrow you must teach again. Don't wear yourself out dragging a stranger to the podium with you; having to act a false part interferes with performance. Let yourself relax, be type-cast, and things will go better. You should enjoy yourself in your classroom. Remember that this is your chosen profession. If you can take pleasure from this exciting occupation—teaching law to the leaders of tomorrow!—you will last a lot longer at your job and do it better too. If, after trying it for a few years, you find that you do not enjoy your classroom and in fact hate it, perhaps law teaching is not for you. Do yourself and your students the favor of changing jobs.

C. The Students' Egos

Students too are people. As the years go by it's harder to remember this. Your students may seem more and more fungible, and it will be easy to forget how individual they are, how vulnerable, how fragile. If they worship you, you will disappoint them if you do not care about their lives. If they dislike you, they will hate you all the more for your indifference to their lot.

The "Professor Kingsfield," "grind 'em to a pulp" style of law teaching is on the wane, thank God. If you want to teach using fear to get the students' attention, then scare them with the coming pressures of the "real world," where such malpractice beckons daily. A few examples of horrors such as bad attorneying, clients' anger, cases lost, or disbarment get their attention and focus their minds wonderfully well; they need not fear you also. Knowing that live problems loom on the horizon is terror enough.

This is not to say you should coddle the students. One can challenge students without browbeating them.³ I start each of my courses by telling the

3. At some summer meetings of the AALS Law Teacher's clinic, there is shown a videotape of me teaching the contracts case of *Krell v. Henry* to three different groupings of my 1970 first year class. In one class I deliberately am "neutral" in my responses to the students' comments; in another I compliment almost every-

students that what I want from them is *excellence*, their "best shot." I demand it, too, but how hard I push depends on the student and the situation. The student who is so rattled by his or her first day of law school and the limelight you have just shined on his or her seat and who has just forgotten his or her name is a poor choice for rigorous cross-examination. Push hard here and this student will hate you for the rest of his or her life; push too hard and he or she will drop out of law school, depriving society of whatever legal talents might have flowered with gentler gardening. But the brass, brash, eager-beaver, whose hand is forever in the air and whose fine intellect is on permanent display, can be chased up the socratic tree and off the limbs, only to survive the fall better for the experience.

Students are pleased if you have high standards and will work hard at almost any level you demand. The first-year students, and particularly in their first few law school months, will overwhelm you with their energy and enthusiasm. Casually mention that an interesting case once arose in Guam and, unless watched, they will charter a plane and fly to Guam to study the court records. As they go through law school, students gripe steadily about the professors who require a great deal in their classes, but by graduation their gratitude is writ large. If you assign a great deal and hear complaints, tell the students that you know law school is hard but did they think they would only get to do easy things in their lives?

Don't hesitate, at appropriate classroom moments, to stop short the task at hand and explore the human problems your students face. If the students trust you, a show of concern for their difficulties will involve you in their humanity instantly. Becoming aware of how things look from their point of view is a valuable accomplishment. Keep that perspective and you will be a better teacher. Toward the end of a recent school year, I suddenly asked my first-year contracts class: "How is this all going?" and sat back to listen, experiencing their agonies as I responded to questions like, "Is it true that the faculty thinks we're not as good as last year's class?"

Outside of class it helps to attend some student functions and let all concerned discover the common human elements. Student parties are tricky. Not only may things be floating around that can cause professional tensions (marijuana, for example), but you have to know when to leave (preferably before some large, burly drunk remembers that you once gave him a "D"). Getting close to the students is a matter of balance: too close and suddenly

thing (the so-called "nice" class); and in the third I browbeat the students no matter what they say (the "nasty" class). This project (which unfortunately catches me in my very first year of teaching) was the idea of Professor Charles Kelso of Indiana University Indianapolis Law School, who believes (rightly, I think) that students do better if praised instead of being constantly condemned. Unhappily, many who have seen the videotape point out that the "nasty" class obviously is the best of the three, the session which most thoroughly explores the issues. The reason for this, I think, is that the students had been told that *I* was the subject of the experiment (not them), that various teachers in various stages of their careers were being captured on film. The "nasty" class was the third of the day, and the students were shocked by my treatment of them, assuming (as they later said) that I was tired and doing a bad job, blowing my chance of showing my abilities. Thus they redoubled their efforts to "help Whaley out," producing the superior class. Whether they would have worked as hard if they had not liked me, if I routinely browbeat them, is a moot question. In the end, I do not believe that the videotape proves anything at all about the major point.

you have personal friends taking your courses and, inevitably, getting bad grades; too distant and the law school becomes an icy and uninteresting world. (I need not add, surely, that sex with a student gives new depth and meaning to the word "stupidity.")

D. *Classroom Tricks*

What follows here are some things I have tried that work well for me, for my style. If they interest you, experiment and see whether they help you.

One basic I have learned is that students are very appreciative of any advance warning on coverage. As a student I always hated wondering how much material I should be preparing for the morrow and how much of the book the course would encompass. As a teacher I make sure the students are never in the dark on this. In my first-year contracts course, I announce on the first day that the students are responsible for staying four cases ahead of wherever we ended the class, a "floating" assignment. I don't always cover four cases (particularly not in the first months), but I always reserve the right to cover four. At this pace I generally get through the book, though I may omit (with adequate warnings) a case here or there, and toward the end of the year I *do* cover four cases a class on all but the exceptional days, even if I have to call on "Mr. Whaley" and brief a few myself.

In the upperclass courses, I hand out a detailed assignment sheet on the first day of class, and I discipline myself so that I pretty much keep to it. This is easier (and more important) in some courses than in others. I know that this is more work for the professor, but students will be grateful for the effort.

Try also to keep the lines of communications open with your students so that you have early warning of educational difficulties. If on reading the final exams you suddenly realize—as you will; *this will happen*—that that entire class misunderstood a key issue, you will know who is to blame, but it will be too late to call them back into session for a final debriefing. I've started every class I've ever taught by asking, "Are there any questions?" And I frequently get them. Stick around after class for a few minutes and *listen* and you will learn valuable things about what you are or are not accomplishing. The students will be justifiably annoyed if you regularly rush from the classroom at lecture's end, leaving their private queries unresolved.

On the first day I give the students a description of the final exam (essay or objective or both, open or closed book, length, percentage of grade, effect of classroom participation, what I look for). Students are anxious to be relieved on this score and will pay strict attention to what you say. (In fact, *anytime* you want to get the attention of the class, simply begin a sentence quietly with "on the final exam . . ."; this always works.)

To teach well, it helps to know your students as individuals: their different intellectual levels, legal talents, personalities. Explore among the quiet ones and you will discover giant intellects lurking silently in the depths of the class, like bass in the shadows of a still lake. Tap these sources and the

classroom discussions will be richer. In doing so, learn as many of the students' names as you can (and be at some pains to pronounce them right—phonetic notes on the seating chart help here). I once heard a student say that he worked hardest in the one law school course in which the professor knew his name, and that statement caused me to embark on the strange project of memorizing my seating charts. I try to do this for all my courses, but I certainly do it every year for at least my contracts class. It is, of course, a real chore (but it takes less time than you'd think, and you can practice every class getting better and better, surprising the students), but knowing their names pays dividend after dividend, both in and out of class. And, as the student said, it does cause them to work harder, almost as if they have a more personal stake in your course.

Listen when the students talk in class. This is hard to do, harder to do than it sounds. Your own mind will be racing furiously as you think about what comes next or your own reply to the question (or, as time goes on, where you are going to have lunch). It is tempting to listen just enough to be able to respond. Try to go beyond that to hear the confusion the question suggests, or, if it is a student observation, the merits of the idea (and sometimes its beauty).

One phenomenon that amazed me when I first began teaching was how often (more then, less now) I would be explaining something in the classroom, and suddenly, for the first time, I would see myself how it really worked or how it fit together with some other thing I knew. Without shame I would instantly teach my new-found knowledge as if it were the most obvious point in the world. On closer examination these classroom insights almost never proved wrong (and when they did, I apologized in the next class, clad in sack-cloth, covered with ashes). Be prepared for these insights and do not be afraid of them; they are one of the joys of teaching. Beware, however, of hypotheticals that you invent on the spot; these have a way of turning into public disasters as the ill-considered ramifications of your posit confuse the issue and confound your original message.

The students and faculty joke about the professor who is forever telling "war stories"—stories of his or her experiences, legal or not. Joking aside, you will discover that legal points made in the course of such stories stay with students and are well remembered after much else is forgotten. If your stories are pedagogically helpful illustrations of the legal concept under discussion, use them, treasure them. Trotting them out year after year to do their assigned duty is an honored educational tradition. Only avoid telling them more than once to the same audience and it does not matter how often they do service. Don't let it bother you that you seem to have said the same thing in the same tone with the same inflections over and over again. That is true of much of what we teachers say, and the students, needing the information and receptive to this format, have not heard it before and will listen with alacrity. Your story will be repeated (studied) in the halls.

There are no absolute rules to teaching, and particularly not to law teaching. You will be astounded at how little the rest of the law school community knows or cares what you are doing or saying in your classroom. The dean and the faculty will start paying attention only if you cause massive student dissatisfaction, and then typically not until it reaches the point where committees of students are meeting with the dean or are burning effigies of you on the law school lawn. With such freedom comes the courage to try your own ideas, to create new teaching styles and thus reach the students by strange educational avenues. Don't feel bound to teach law the way it was taught to you, and once you start to feel at ease in the classroom, experiment with whatever seems worth trying (and write me and let me know if you uncover anything valuable).

One way of keeping the students focused on your course, as well as providing continuity from class to class, is to pose a question or problem at the end of the hour for the next session. Give them time to write it down and announce that some lucky, unnamed soul will have the privilege of discussing the matter with you next time. You will often be pleased at the study given the issue in the interim, if not by the first person you call on, then by much of the class.

If your questions at any time stump the student you have been quizzing and you feel that he or she has nothing more to say, for pitty's sake don't beat him or her into the ground. Move on to someone else. One way of easing the situation without bruising egos is to ask, "Would you like co-counsel?," which frequently brings a grateful and relieved "Yes."

On the final day of class, sum up. Nothing is as disappointing as the weak, inconclusive finish to a course, and after a whole semester (or more) with these people and this subject, surely you have something to say even if it is nothing more than to wish them well on the exam.⁴ At the end of his

4. At the very end of my year-long contracts course, I congratulate the students on their handling of the first year of law school, and I tell them that I am proud of them. I then read them the following Oliver Wendell Holmes quotation:

And now, perhaps, I ought to have done. But I know that some spirit of fire will feel that his main question has not been answered. He will ask, What is all this to my soul? . . . [W]hat have you said to show that I can reach my own spiritual possibilities through such a door as this? How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeepers' arts, the mannerless conflicts over often sordid interests, make out a life? Gentlemen [and Ladies], I admit at once that these questions are not futile, that they may prove unanswerable, that they have often seemed to me unanswerable. And yet I believe there is an answer. They are the same questions that meet you in any form of practical life. If a man has the soul of Sancho Panza, the world to him will be Sancho Panza's world; but if he has the soul of an idealist, he will make—I do not say find—his world ideal. Of course, the law is not the place for the artist or poet. The law is the calling of thinkers. But to those who believe with me that not the least godlike of man's activities is the large survey of causes, that to know is not less than to feel, I say—and I say no longer with any doubt—that a man may live greatly in the law as well as elsewhere; that there as well as elsewhere his thought may find its unity in an infinite perspective; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable.

O. W. HOLMES, *THE PROFESSION OF THE LAW: CONCLUSION OF A LECTURE DELIVERED TO UNDERGRADUATES OF HARVARD UNIVERSITY, February 17, 1886*, in *COLLECTED LEGAL PAPERS* 29 (1920), and in *SPEECHES* 22 (1934). I then add, "So I say with Holmes, 'Go out and live greatly in the law,'" and flee the classroom. Feel free to use the Holmes quote if you like it UNLESS YOU ARE TEACHING AT THE SAME SCHOOL I AM, IN WHICH CASE LET MY QUOTE ALONE.

year-long torts class, the late Leon Green of Texas used to stand and applaud the students as they applauded him. Particularly with your first-year students, a word of praise for their efforts is certainly in order and will be appreciated.

III. THE EXAM

A. *Preparing the Exam*

In putting your first exam together, be prepared to encounter an almost universal phenomenon: a new teacher's first exam is always much too difficult. *Much* too difficult. Your expectations are naturally high; when you grade the exam that you have loaded chock-full of fascinating issues, you will be disappointed at how poorly they are addressed. You may be surprised to learn that the students are passing the word that your exam was "hard" or "unfair." Next time round you ease up a bit, but your exam is still rumored to be too complex. About the third or fourth time you will start to create exams that really do test what your students have learned.

Professor Lino Graglia of the University of Texas is credited with saying that every teacher at one time or another asks a "trick" question, and that having to grade the resulting garbage breaks the teacher of ever again yielding to this temptation. Don't ask trick questions; getting the students to answer normal questions is trick enough.

When grading the exam, you will often discover that students are addressing an issue you did not mean to put into the exam but which is there and must be dealt with. Don't be embarrassed by this oversight; it happens over and over again to us all. The problem is that the exam creator has difficulty seeing the exam from the viewpoint of the exam takers and will frequently have a misconception of the bells it will ring in their minds. If the unwelcome issue is fairly presented by the facts, accept it with good grace and grade the exams as if it were an intentional element.

In preparing the exam, make a list of the key matters covered in the course. How many of these should be tested and in what depth? To answer these questions, consider your goal for the course, and structure your questions so as to exhibit the students' performance in relation to meeting that goal. If you put in too much you will learn something about breadth of knowledge but not much about its depth. Put in too little and you will spark some students to detailed, impressive analysis, but from the bulk of the class you will get almost nothing to grade.

Beware of using old exam questions, whether yours or someone else's. Old exams have a way, improbable as it may seem, of still being in circulation and of turning up to complicate your life in a truly ugly way. I could curl your hair with horror stories on point; buttonhole me at some conference and I will. In the meantime, work though it be, create new exams as a routine part of teaching every course (though reworking old questions in altered format is a respected and useful shortcut here).

One last thing on creating exams: put some effort into making the exam

instructions clear and listen to the student questions you get about the exam with an ear to their relevance when rewriting the instructions the next time around. The students will want know whether the exam is open-book, whether they can write on every page or on every line, the time limits of the exam, and whether they can keep the exam questions when they turn in their bluebooks. I throw in also a statement that the student should be careful not to identify himself or herself in any way other than by exam number, and I finish the instructions with this legend in caps: **FAILURE TO WRITE LEGIBLY RESULTS IN AN IRATE GRADER READING YOUR EXAM.** After you have graded your first set of exams, you will see the need for similarly dire warnings about bad handwriting.

B. Grading the Exam

One of the hardest things about grading exams is keeping your standards constant throughout the grading period. By the final third of the bluebooks, you will have an excellent idea of what the average answer looks like and can measure those left accordingly. But in the beginning you must guess whether you are reading good exams or bad exams. One helpful trick is to read five bluebooks at random without grading them and replace them in the stack at different points; they will give you some idea of the boundaries of student response.

You can worry too much about this issue, never satisfactorily resolving it. Subjective grading has certain unavoidable injustices built into it simply because it is, in fact, subjective. Don't let this bother you to the point where you overgrade exams, exhausting yourself in the process. Grade the exams *once* and turn them in. Students who are treated unfairly by the happenstance that you graded their exams during the time you were worried about your sick child will have their next exams graded by an instructor who has just learned of an unexpected inheritance. These things have a way of balancing out.

Try to avoid objective exams (I'll make myself unpopular in saying this, I suppose). They are a snap to grade, but they rarely test anything more than surface knowledge of detail, saying nothing about the students' understanding of the course or their eventual performance in this area as lawyers. Law is too subjective a discipline to adapt well to a "true-false" reduction. If you do give objective exams in whole or in part, be prepared to throw out the ambiguous questions and to rewrite the exam in large part every time you give it, for no matter how careful and secretive you are, hunks of it will float through the student populace (particularly if you are known as giving the same exam year after year). Permitting the students to explain their answers in marginal notes or in a bluebook will ensure a fairer objective exam.

For all essay exams, and particularly for first-year courses, make marginal notes in the bluebook itself to remind yourself what you liked or didn't like about the answer. Soon the students will be sitting in your office going over these same exams, and these marginal notes will prove their worth

to you time and again. Eventually you will work up a shorthand system so that short marginal comments speak volumes. When I write "Oh?" in the margin, for example, I mean "I might be persuaded on this point by clever argument, but I doubt it, and you have certainly not written enough here to begin to convince me." When I write "No," I mean, "This is error"; and when I write "GAK!" I mean, "This is unforgivable error." Particularly if you are planning on handing the bluebooks back (which I do for the first contracts exam), write detailed marginal notes and don't forget some praising of the good points.

Before you give the exam, tell the students what you are looking for and what will please you. I tell them that I want them to spot and describe each major *issue*, state clearly the applicable black letter *rules of law* (practice in explaining the actual rules will stand the students in good stead when they must write briefs or argue cases to the court), and then *argue* the rules as cleverly as possible from all points of view. Skipping any of these steps upsets me, and I lower the grade accordingly. Knowing this ahead of time, my students have little room to complain when I take points off for ignoring my announced wishes.

Also announce in advance to what extent your grading is anonymous, remembering to check your school's official policy on this. If you have access to the students' names, tell the students the point at which you go look to see who did what. If you do this only after the basic grades are set so that you can add points for classroom participation, tell the students that too and tell them also how you evaluate classroom performance. Then stick to whatever procedure you announce; lawsuits have been known to arise from abuse of the grading schema.

Until you are sure of what you are doing, keep your announced grades in line with the patterns established by faculty members at your school who are teaching at the same level. If you are teaching one of three sections of contracts avoid giving all "A's" or "F's" if the other two sections are not also doing this. If your course is out of step with the rest, you throw significant hitches into such matters as law review selection or special remedial class makeup and in the end make yourself the angry target of both students and faculty. Worry also if on comparing your grades with others teaching the same students you find that your best grades were uniformly given to the worst students as evaluated by your colleagues, while your best students did terribly in all of their other courses. This usually means that you are a bad grader, someone the students will not trust to judge them fairly. In such a case, go over a few exams with a trusted colleague and discuss the exam's merits; this should prove eye-opening.

One of the hardest things for the new professor is to give bad grades, particularly flunking grades. Nonetheless, you must steel yourself for this task. Not everyone who gets into law school deserves to graduate, and those who fail do so for an enormously complicated variety of reasons. It is unfair to such students to keep them on in spite of their repeated failures, encouraging

them semester after semester only to force them out after years of futile efforts. If you, in concert with other faculty members having similar misguided soft hearts, do nurse the walking wounded through law school, then you deserve the guilt you will feel as you watch them graduate, knowing with an icy certainty that the clients who hire them are going to waste their time, money, and perhaps their very lives. While it is hard to flunk students, it is cruel to keep them in law school any longer than is necessary to ascertain that they are not going to make it.

You need to develop standards for what your grades mean. For me, a "C" means that the recipient has only the most basic knowledge and no in-depth appreciation (as demonstrated by the exam) of the subject matter. Higher grades reflect increasing levels of competence. On the other hand, a "D" from me means that I do not believe that the student knows the subject well enough to practice it, and an "F" means that if the performance exhibited by this one exam is typical, I am certain that the student should not be a lawyer. If enough other faculty members share this evaluation, the student will be dismissed from law school, as he or she rightly should be.

C. After the Exam

The hardest part of the examination process is not creating or even grading the exam, but defending the grades given. I devote a great deal of time to going over exams with students, scheduling them into one half-hour block per student for this purpose. In the resulting discussions, I read the exams out loud to the students, commenting on my thought processes as grader as we go. At the very least, students who endure this session tend to write future exams for me along the lines I suggest, which suits me fine (and consequently, their grades from me rise).

It is a mistake to change grades (absent a mathematical error or some incredible blunder on your part). Students soon learn which faculty members can be bullied into upping the grade, and they queue up outside his or her office every time grades are announced. Also, don't let the students see each other's exams for comparison or they will soon be in your office (or court) wanting to regrade your exams for you on the basis of real or supposed grading inequities.

When I get ready to hand out grades in an ongoing class (for example, in January I hand back the first semester contracts grades), immediately before doing so I give a lecture detailing what I was looking for on the exam. Students' jaws drop as I describe the "perfect" exam (concocted from the myriad possibilities suggested by all the exams I have just read) and as I bawl them out for certain stupid mistakes. I sometimes read to them from excellent exams. At this point even the best student in the class is sure he or she did poorly, and I then release them to go learn their actual grades. In the relief that follows for most of them, it never occurs to many to bother me for a further explanation of their grade; they understand it all too well. In this some-

what brutal way, I cut down exam counselling to only those students who really need it, for most of whom I have written "See me" in the exam's marginal notes.

Finally, don't throw the exams away. AALS rules require that they be kept for one year, and your school may have a rule on point requiring their retention for an even longer period. Typically, the law school has a storage area for them.

IV. CONCLUSION

Steel yourself for this idea too: Whatever you do, you will not be liked or appreciated by all your students. Human nature is too variable for that. This means that written student evaluations will necessarily include some unfair and untrue criticisms, and you must guard against dwelling on such evaluations as if they were gospel. Most teachers fly into fits of depression on reading their first set of student evaluations, believing the bad comments and glossing over the good ones. Don't let the process do this to you; take from the evaluations only those comments that sound "right" to you and that make suggestions that you can do something about. Try to take some pleasure from the praise you receive. Forget the rest.

In the end you will know whether you are doing your best based on how you feel as you watch your students graduate. Do not miss the graduation ceremony each year; it is a signal event, no matter how dull the speaker. As the students turn into lawyers before your very eyes, you grow in understanding your function, in putting perspective on your dealings with the students to follow, in setting standards by which to measure all that happens in your professional life. When you "profess" law thereafter in your classroom, do so with this moment in mind and your classes will take on a meaning beyond your personal concerns or even beyond theirs. Everything should go better in that focus. Try it and see.

